



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

February 7, 1995

Honorable Joe F. Grubbs  
County and District Attorney  
Ellis County Courthouse  
Waxahachie, Texas 75165-3759

Letter Opinion No. 95-002

Re: Propriety of Ellis County Treasurer's  
making payments from the county treasury  
without prior approval by the commissioners  
court and related questions (ID# 26895)

Dear Mr. Grubbs:

You ask whether it is proper for the Ellis County Treasurer to make payments from the county treasury prior to the commissioners court's approval of such expenditures in an open meeting. Your request references two sections in the Local Government Code. Section 113.041 provides in relevant part:

(a) The county treasurer shall disburse money belonging to the county and shall pay and apply the money as required by law and as the commissioners court may require or direct, not inconsistent with law.

....

(c) The county treasurer may not pay money out of the county treasury without a certificate or warrant from an officer who is authorized by law to issue the certificate or warrant.

Section 115.021 provides:

The commissioners court of a county shall audit and settle all accounts against the county and shall direct the payment of those accounts.

We think that it is clear under section 113.041(c) that the treasurer may not make payments from the treasury without a certificate or warrant for each payment from "an officer who is authorized by law to issue" it. *See, e.g., Attorney General Opinions JM-192 (1984); H-171 (1973); 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 16.10 (Texas Practice 1989) (and other authorities cited there).* Further, as Attorney General Opinion JM-986 (1988) noted, in counties, like Ellis County, of under 190,000 population, there are no officers except the commissioners court authorized to issue such certificate or warrant. *Cf Local Gov't Code § 113.047 (county officers in counties of 190,000 population or more may draw checks on treasury to pay salaries or expenses).*

Also, we think it clear that the commissioners court's issuance of such certificate or warrant, a formal act of public business, must be done in an open meeting held in compliance with the Open Meetings Act of the Government Code chapter 551. *See id.* §§ 551.001(4) (defining "meeting"), 551.002 (meetings of governmental body must be open unless excepted by chapter), 551.071 - .084 (exceptions to open meeting requirement). We find none of the chapter 551 exceptions to the open meeting requirement applicable here.

With respect to the propriety of the treasurer's making payments without the prior approval of the commissioners, we do note that in *Gussett v. Nueces County*, 235 S.W. 857, 860 (Tex. Comm'n App. 1921, judgm't adopted), a suit by the county against the former county treasurer and the sureties on his official bond for alleged shortages in the county treasury, the commission of appeals found that the commissioners court's subsequent "ratification" of payments which had been made by the treasurer without prior approval by the commissioners court relieved the treasurer of liability on the alleged shortages resulting from those allegedly improper payments. The court, however, acknowledged that the treasurer's making of payments without prior approval of the commissioners was at variance with the procedures set out in the predecessor provisions of section 113.041, quoted above, then V.T.C.S. article 1509, and further cautioned:

Of course, if the treasurer pays out money without a warrant or other authority of the commissioners' court, he necessarily takes a great risk, for the court may not ratify his payments.

We read the holding of the *Gussett* case as limited to the issue of the treasurer's liability for payments which are approved by the commissioners court after rather than before the payments were made, not as an approval of that procedure. In any case, we think that *Gussett* supplies the answer, in the affirmative, to your other question: [C]an the County Treasurer be personally liable for any payments which are not subsequently approved?

### S U M M A R Y

The Ellis County Treasurer may not properly make payments from the county treasury without prior approval by the commissioners court. If he does so, he is subject to personal liability for such payments if they are not subsequently ratified by the commissioners court.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee